



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SENT VIA EMAIL

MAR 31 2016

Patrick T. Fitzgerald
Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, New York, 14203-2887
pfitzgerald@phillipslytle.com

Re: Freedom of Information Act (FOIA) Request EPA-R2-2016-002911

Dear Mr. Fitzgerald:

This is in response to your above-referenced FOIA Request in which you requested documents referencing, related to, associated with, concerning, or pertaining to the Niagara Highway Garage Site, located at 7105 Lockport Road, Niagara Falls, New York 14305. You received an email notification that the documents responsive to your request are available on the FOIA Online website: <https://foiaonline.regulations.gov/foia/action/public/home>.

Please note, however, that some of the responsive documents have been withheld in their entirety and others have been redacted. The majority of these documents and redacted segments are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). Specifically, these withheld documents and redacted segments are deliberative and predecisional in nature, are attorney – client communications, and/or are attorney work products and thus are privileged. In addition, certain withheld and redacted documents are exempt from mandatory disclosure pursuant to Exemption 7 of the FOIA, 5 U.S.C. § 552(b)(7), as these documents were compiled for law enforcement purposes and their disclosure either could reasonably be expected to interfere with law enforcement proceedings under Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), or could disclose techniques, procedures, or guidelines for EPA investigations under Exemption 7(E), 5 U.S.C. § 552(b)(7)(E).

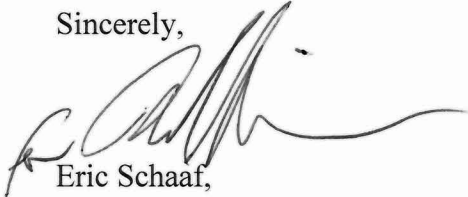
For additional information concerning the fully withheld documents, please see Table 1 (enclosed). For the redacted documents, each redaction is marked in the margin with the pertinent FOIA exemption.

You may appeal this determination by submitting your appeal via FOIAONLINE at <https://foiaonline.regulations.gov/foia/action/public/home> or to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), email: FOIA_HQ@epa.gov. Only items mailed through the U.S. Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J,

Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30-calendar-day limit. The appeal letter should include the case file number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have further questions regarding this matter, please contact Margo Ludmer, Assistant Regional Counsel, New York / Caribbean Superfund Branch, at (212) 637-3187 or Ludmer.Margo@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Schaaf", with a long horizontal flourish extending to the right.

Eric Schaaf,
Regional Counsel

cc: Wanda Calderon, FOIA Officer
Margo Ludmer, Assistant Regional Counsel

TABLE 1: INFORMATION CONCERNING FULLY WITHHELD DOCUMENTS

Description of Documents	FOIA Exemption	Approx. No. of Pages	Notes
Staff attorney notes from conferences with on-scene coordinator and Removal Action Branch manager (one page dated November 3, 2015; three pages undated)	5 – deliberative process privilege, attorney-client privilege, attorney work-product privilege 7(a)	4	Handwritten notes taken during discussions between attorney and client regarding legal approach to the Niagara Town Garage Site.
Staff attorney notes from call with New York State Department of Environmental Conservation attorney (dated: October 29, 2015)	5 – deliberative process privilege, attorney work-product privilege 7(a)	2	Handwritten notes taken during discussion with attorney at NYSDEC, reflecting EPA attorney's interpretations of discussion.
Emails between staff attorney and on-scene coordinator (dated: December 17, 2015; January 13, 2016) and attachment	5 – deliberative process privilege, attorney-client privilege, attorney work-product privilege 7(a)	6	Emails and one attachment exchanged between attorney and client regarding legal matters related to Niagara Town Garage Site.
Emails between staff attorney and EPA scientist (dated: November 12, 2015)	5 – deliberative process privilege, attorney-client privilege 7(a)	2	Emails exchanged between attorney and client regarding the Niagara Town Garage Site. Emails are predecisional and reflect deliberations regarding technical approach to investigation.
Email from Office of Regional Counsel manager to staff attorney (dated November 12, 2015)	5 – deliberative process privilege 7(a)	2	Intra-agency predecisional and deliberative correspondence regarding legal approach at Niagara Town Garage Site.
Draft Niagara Town Garage Community Updates	5 – deliberative process privilege	5	Three draft community updates that differ significantly from the final release.

